

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CRP(PD) No.875 of 2018

1. K. Vanitha
2. Minor Subhasini
3. Minor Dhanachezhian
4. Subramani
5. Panju

.. Petitioners

Vs

1. St. Velankanni Arokiya Annai Church
represented by its authorised Church Member
G.Leo Thadeus
S/o.Ganaparakasham,
148, Ramasamy Nagar,
Church Road,
Cheran Ma Nagar,
Coimbatore 641 035
2. Rev. Fr. Joseph Prakasam,
Formerly Parish Priest,
St. Assisi Church,
Ganapathy,
Coimbatore
now at Bishop House,
St. Michael Church Compound
Big Bazaar Street,
Coimbatore -1.
3. A. Michael Raj,
Then Secretary of
Punitha Velankanni Arokiya Madha Church,
63, Gurusamy Nagar,
Thanneerpandal,
Peelamedu,
Coimbatore -4.
4. Jacob Jayaseelan,
Proprietor,

M/s.Pioneer Builders,
24, Annai Velankanni Nagar,
Sowripalayam,
Coimbatore -28.

5. Ranjithkumar

6. The Tahsildar,
Coimbatore North Taluk,
Dr. Balasundaram Road,
Coimbatore -18.

7. The State of Tamilnadu represented
by the District Collector,
Collectorate Campus,
Coimbatore - 18

(R2 to R7 given up)
Respondents

..

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India to strike off the plaint in O.S.No.1744 of 2017 on the file of III Addl. District Munsif Court, Coimbatore by allowing this Civil Revision Petition.

For Petitioners : Mr. N. Manokaran

For respondents : Mr.S.S.Swaminathan for R1

ORDER

The respondents 1 to 3 entered into an agreement for construction of Church Buildings in Kallapatty Village, Coimbatore with the Contractor namely, Jacob Jayaseelan/4th respondent and Ranjith kumar/5th respondent on 8.5.2012.

2. The workmen viz., S. Kumar engaged under contract met with an accident and suffered grievous injuries. He was admitted as

inpatient in PSG Medical College Hospital. He was succumbed to injuries on the next day. Based on the death of the worker, the petitioners, who are the legal representatives of the deceased laid a claim petition in E.c.No.6 of 2013 before the Deputy Commissioner of Labour, Employees Compensation Authority, Coimbatore.

3. The Church was represented by its Secretary among other respondents. The authority under the Employees Compensation Act, after considering the elaborate evidence adduced by both sides, awarded a compensation of Rs.8,20,400/- to be paid by the Church. Since the Church was represented neither by counsel, nor in person, the authority has set the Church exparte.

4. In that process, the employees compensation Commissioner omitted to include the medical expenses. Therefore an amendment petition was filed to amend the award, wherein, the authority under the Employees Compensation Act amended the compensation as Rs.8,50,796/-. Thereafter the Church claiming the secretary is incompetent to represent it, filed a petition in I.A.No.92 of 2016 to set aside the exparte order passed against it.

5. The authority after considering the admission made in the

affidavit that the Church was very much aware of the proceedings, dismissed the petition to set aside the exparte order on 7.7.2017 under Order IX Rule 13 CPC. Thereafter on a petition filed by the claimants, the Commissioner for Employees Compensation Act referred the matter to the Revenue Authorities to recover the money under Revenue Recovery Act.

6. After receiving the notice from the concerned Tahsildar under reference No.RP.No.5 of 2016, dated 13.4.2016, the Church challenged the same by way of suit in OS.No.1744 of 2017 seeking to declare the proceedings initiated under Revenue Recovery Act in reference No.7209 of 2016 dated 14.4.2016 on the basis of the award dated 18.12.2015 passed in EC.No.6 of 2013 as null and void and not binding on the plaintiff. Along with the suit, I.A.No.1461 of 2017 was filed seeking temporary injunction against the defendants 10 and 11 from executing reference under No.RP.No.5 of 2016 passed on the basis of award dated 18.12.2015 in EC.No.6 of 2013.

7. Against the filing of the said suit, the petitioners/legal representatives of the deceased has filed the present Civil Revision Petition seeking to strike off the plaint in OS.No.1744 of 2017.

8. Heard Mr. N. Manokaran, learned counsel for the petitioner and Mr.S.S.Swaminathan, learned counsel for the 1st respondent.

9. The learned counsel for the petitioners would vehemently contend that the respondent Church with a malafide intention to evade deposit of the compensation amount awarded by the authority as per section 30 of the Employees Compensation Act, had preferred the suit. It is only an attempt to defeat the ends of justice and to evade payment of compensation to the petitioners with an ulterior motive. Further, the suit is barred by Limitation Act as well as Specific Relief Act.

10. The learned counsel appearing for the 1st respondent Church would contend that the 1st respondent was not a party to the claim petition and as such, the award will not binding on them. The Revenue Recovery Proceedings *per se* is illegal and they should be given an opportunity to contest the claim on merits. Till such time, the recovery proceedings shall be stopped.

11. From a perusal of the plaint, it is seen that the first respondent seeks to set aside the recovery proceedings pursuant to the award passed by the competent authority. The Employees

Compensation Act is a beneficial legislation constituted with an object to provide compensation to the workers for the claim arising out of and in the course of employment resulting in the death or disablement. The scheme of the Act specifically provides for an appeal under Section 30 on the substantial questions of law and on a conditional deposit of the entire award amount. When there is a statute enacted for that purpose, it cannot be by-passed from being implemented, unless and until the award is set aside in the manner known to law. Admittedly, the first respondent was having knowledge about the pendency of the claim petition and that it was represented by an Officer, though incompetent before the concerned authority. The authority has, after elaborately considering the contentions of both the sides have passed an order. The only course open to the first respondent is that it should challenge the award as per the provisions of the statute.

12. In fact, the first respondent attempted to do away with the award by filing a petition under Order 9 Rule 13 CPC. When he had ventured into that act, he should have challenged the order dismissing the petition to set aside the ex parte order on merits. But he kept quiet all along. This really shows that the first respondent has deliberately avoided the regular course, of course, as contended by

the learned counsel for the petitioner, to evade the deposit of the award amount along with interest, the 1st respondent Church has chosen to wait till the initiation of revenue recovery proceedings, and to file the present suit to declare the revenue recovery proceedings as null and void and thereby to set aside the award indirectly. Such an act is a clear abuse of process of law.

13. The Honourable Supreme Court in the case of **T.Arivanandam (1977 (4) SCC 467)**, has held as follows;

'What is the horrendous enterprise of the petitioner? The learned Judge has, with a touch of personal poignancy, Judicial sensitivity and anguished anxiety, narrated the sorry story of a long-drawn out series of legal proceedings revealing how the father of the petitioner contested an eviction proceeding, lost it, appealed against it, lost again, moved a revision only to be rebuffed by summary rejection by the High Court. But the Judge, in his clement jurisdiction gratuitously granted over six months' time to vacate the premises. After having enjoyed the benefit of this indulgence the maladroit party moved for further time to vacate. AR these proceedings were being carried on by the 2nd respondent who was the father of the petitioner. Finding that the court's generosity had been exploited to the full, the 2nd respondent and the petitioner, his son, set upon a clever adventure by abuse of the process of the court. The petitioner filed a suit before the Fourth Additional First Class Munsif, Bangalore, for a declaration that the order of eviction, which had been confirmed right up to the High Court and resisted by the 2nd respondent throughout, was one obtained by 'fraud and

collusion'. He sought an injunction against the execution of the eviction order. When this fact was brought to the notice of the High Court, during the hearing of the prayer for further time: to vacate, instead of frowning upon the fraudulent stroke, the learned judge took pity on the tenant and persuaded the landlord to give more time for vacating the premises on the basis that the suit newly and sinisterly filed would be. withdrawn by the petitioner. Gaining time by another five months on this score, the father and son belied the hope of the learned judge who thought that the litigative skirmishes would come to an end, but hope can be dupe when the customer concerned is a crook.

The next chapter in the litigative acrobatics of the petitioner and father soon followed since they were determined to dupe and defy the process of the court to cling on to the shop. The trick they adopted was to institute another suit before another Munsif making a carbon copy as it were of the old plaint and playing upon the likely gullibility of the new Munsif to grant an ex parte injunction. The 1st respondent entered appearance and expose the, hoax played upon the court by the petitioner and the 2nd respondent. Thereupon the Munsif vacated the order of injunction he had already granted. As appeal was carried without success. Undaunted by all these defeats the petitioner came to the High Court in revision and managed to get an injunction over again. The 1st respondent promptly applied for vacating the temporary injunction and when the petition came up for hearing before Mr. justice Venkataramayya, counsel for the petitioner submitted that he should not hear the case, the pretext put forward being that the petitioner had cutely mentioned the name of the judge in the affidavit while describing the prior proceedings. The unhappy Judge, who had done all he could to help the tenant by persuading the landlord, found himself badly betrayed. He adjourned the case to the next day. The torment he underwent is obvious from his own order

where he stated : "I spent a sleepless night yesterday."

Luckily, he stabilised himself the next day and heard arguments without yielding to the bullying tactics of the petitioner and impropriety of his advocate. He went into the merits and dismissed the revision. Of course, these fruitless proceedings in the High Court did not deter the petitioner from daring to move this Court for special leave to appeal.

We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 1 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi "It is dangerous to be too good."

and submitted that the present plaint is liable to be rejected at the

threshold as the suit is meritless and frivolous.

13. Such litigation shall be nipped at the bud. The first respondent not only adopted the short cut method, but also filed a suit beyond the period of limitation. Section 59 of the Revenue Recovery Act mandates that a suit shall be instituted within the period of six months from the date of execution. The award was passed on 29.1.2016, but the suit came to be filed only on 6.11.2017 beyond the period of limitation, which on the face of it is barred by limitation.

14. Further Section 41 of the Specific Relief Act mandates as follows;

'41. **Injunction when refused.** - An injunction cannot be granted-

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court;

(j) when the plaintiff has no personal interest in the matter.'

15. There cannot be a prayer to prevent legal implementation of the order. The first respondent has indirectly challenged the award which reached finality, praying that it should not be implemented. Such a suit is specifically barred by Specific Relief Act, 1963. Viewing from any angle, the suit filed by the 1st respondent is a clear abuse of process of law and is liable to be interfered with and accordingly plaint in O.S.No.1744 of 2017 on the file of III Additional District Munsif Court, Coimbatore is withdrawn and struck off. Consequently, the connected C.M.P.No.4804 of 2018 is closed.

16. The first respondent is directed to deposit the entire award amount along with interest from 30 days from the date of correspondence till the date of deposit at the rate of 12% per annum within a period of one month from the date of receipt of copy of the order, failing which, the Revenue Authorities are directed to attach the properties of the petitioner and sell it in auction to the extent of satisfying the award along with interest as per the procedure laid down under the Revenue Recovery Act. This exercise shall be concluded within a period of three months from the date of receipt of a copy of this order.

17. Post the matter for reporting compliance on 1.11.2019.

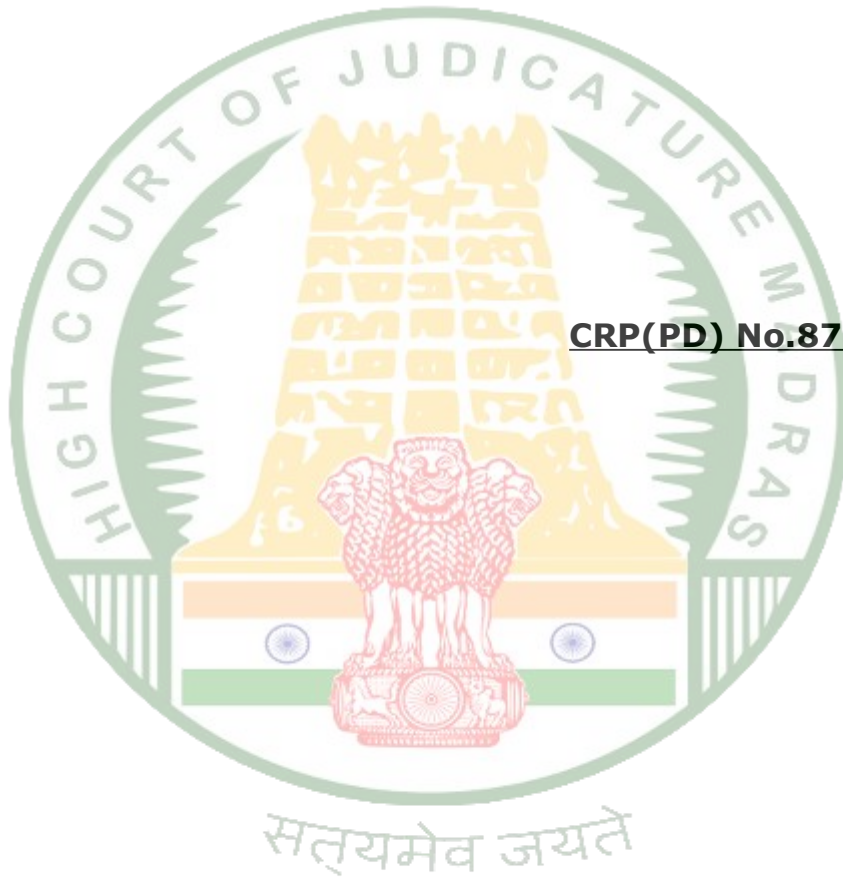
20.06.2019

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Index:Yes/No
Internet:Yes/No

To

The III Addl. District Munsif Court, Coimbatore

M.GOVINDARAJ, J.



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